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CURRENT TOPICS

E. G. Hemmerde, K.C.

WHOEVER heard the late EDWARD GEORGE HEMMERDE, K.C., in the courts came away with the impression of a vigorous and forceful personality as well as of attainments which were quite out of the ordinary. He died on 24th May, at the ripe age of seventy-seven, after as full and varied a life of activity as anyone of his high intellectual capacity could wish. Educated at Winchester and University College, Oxford, where he obtained the difficult first class in Honours Moderations, he was called to the Bar by the Inner Temple in 1897, and joined the Northern Circuit. He took silk in 1908 and in 1909 he became Recorder of Liverpool, and remained Recorder till he died. Like others who have distinguished themselves at the Bar, he was the author of a number of successful plays, including (in collaboration with FRANCIS NEILSON) "A Butterfly on the Wheel," which was one of the best-known plays of its time and is still occasionally acted. He also wrote "A Maid of Honour," "Proud Maisie," "A Cardinal's Romance," and several other plays. Besides these activities he took part in politics and from 1906 to 1910 was Liberal member of Parliament for East Denbigh, and for West Norfolk from 1912 to 1918. From 1922 to 1924 he was Labour member for Crewe. He shone in golf and cricket and was winner of the Diamond Sculls in 1900. Both his eminence at the Bar and his intellectual stature merited high promotion, but he was satisfied to be an outspoken champion of the oppressed even at the cost of sacrificing ambition.

Trinity Law Sittings

THERE are 334 actions for trial in the King's Bench Division during the Trinity Law Sittings, which commenced on 25th May. Last year at this time the number was 313 and the year before it was 233. These include nine special jury actions and two common jury actions. Fifteen cases have been set down in the commercial list. In the Chancery Division 62 non-witness actions and 83 witness actions compare with 53 and 51 respectively, the corresponding figures for last year. There is a total of 40 retained, assigned and other matters, and 71 companies matters compare unfavourably with 54 last year. There are five Admiralty actions for trial. In the Divisional Court list proper there are 12 appeals as against 25 last Trinity term. There are 32 appeals in the Revenue Paper as against 25 last Trinity term, and three in the Special Paper. There are 56 pensions appeals and one under the Requisitioned Land and War Works Act, 1945. There are 285 final appeals to the Court of Appeal (239 last year and 127 the year before). Twenty-five are from the Chancery Division (six last year and one the year before), 103 are from the King's Bench Division (105 last year and 60 the year before); there are 42 appeals in Probate and Divorce and two in Admiralty. County court appeals number 106 (94 last year and 54 the year before). There are 12 workmen's compensation appeals as against 16 last year.

Criminal Justice and the Rod

"THE subtleties of the legal mind," said the Lord Chancellor in *Iolanthe*, "are equal to the emergency. The thing is really quite simple—the insertion of a single word will do it." As an old equity draftsman that Lord Chancellor could appreciate the legal effect of adding the word "not" to a statute. Something similar, apparently, is intended by an amendment of the Criminal Justice Bill which LORD GODDARD has tabled in the House of Lords. He proposes that cl. 3 of the Bill, which is to abolish whipping as a sentence of any court, should be amended so that the word "whipping" should read "whipping with a cat o' nine tails." Lawyers with experience in the criminal courts will strongly support the amendment, but some may side with LORD TEMPLEWOOD and the reformers in demanding the abolition of all punishments which savour of brutality, including the birch. Another amendment by Lord Goddard proposes to add to cl. 34 by giving an additional power to the Court of Criminal Appeal, if in their opinion the interests of justice so require, to direct a new trial of the whole or any part of an indictment. Such power would, without doubt, be used sparingly, and the court would bear in mind in every case the importance of maintaining the ancient principle *nemo debet bis vexari*. That such power ought to be given will be doubted by few.

Office Accommodation and the Town and Country Planning Act, 1947

SOLICITORS worried by the complexities of the latest town and country planning legislation who read a short article by a correspondent in the *Sunday Times* of 23rd May will worry even more. It is not too much to say, wrote the correspondent, that when the Town and Country Planning Act, 1947, comes into force on 1st July, what is practically a vast capital levy on the owners of unconverted houses and undeveloped sites in certain areas will follow. The writer stressed the existing uncertainty as to the method and percentage of compensation to be made out of the global fund of £300 millions to meet cases of hardship. In Mayfair, he continued, where

houses are being converted into offices, the value of a converted house after 1st July may be £100,000, while next door a similar but unconverted house may be valued only at £20,000. The owner of the latter will have to pay a development charge in order to convert, except for dwelling purposes, owing to the local authority's intention to restore the residential classification of many streets. An owner wishing to redevelop may have to pay a charge to the Central Land Board, which may be 100 per cent. of the increase in value. This attempt to arrest an obvious and necessary development in an area where office accommodation is extremely scarce is, as the *Sunday Times* writer points out, an injustice to property owners. It will also be a source of embarrassment to solicitors who, like other professional people, are finding increasing difficulty in securing accommodation in the business areas of London and other big cities.

Business English and Litigation

SIR ERNEST GOWERS having most efficiently and entertainingly disposed of talk concerning the "officialese" of bureaucrats ("Plain Words," H.M.S.O., 2s.), it is time attention was turned to other maltreatments of the English language. Few recipients of solicitors' letters ever complain that these communications are not sufficiently to the point, but solicitors frequently find the reading of business correspondence irksome because of its diffuse and hedging character. Business people seem much more reluctant to commit themselves than lawyers. Hence woolly expressions, meaningless phrases and redundancies tend to crowd all real meaning out. A writer, Mr. FRANK WATKINS, in the *Observer* of 23rd May, gives a few of the more familiar examples of useless verbiage, such as "inst.," "ult.," and "prox.," "assuring you of our best attentions," "In reply to your favour of," and so on. The language of commerce, he says, can and should be at one with everyday life. We agree. Conciseness and clarity in business correspondence would save pounds, not only in terms of labour cost, but also in litigation costs, which frequently result from an ill-drafted letter.

Citizens of the Commonwealth

THERE is a great deal in a name, and while it is true that a rose by any other name would smell as sweet, human beings generally prefer a choice of name to be made carefully. Even where it appears to have been chosen of malice aforethought it is a simple matter to change a repulsive name to something more attractive. Where a name is given by legislation, the greatest care must be taken to consider the susceptibilities of all concerned. The LORD CHANCELLOR, having promised on the second reading of the British Nationality Bill in the House of Lords to consult the Dominions on the question of terminology, has now proposed an amendment that a person with the status of a British subject may be known as either a British subject or as a Commonwealth citizen, and that those two expressions shall mean the same thing. Another new clause which the Lord Chancellor has tabled proposes to include, in reference to the colonies, references to the Channel Islands and the Isle of Man, and that a person connected with the Channel Islands or Isle of Man may, if he so desires, be known as a citizen of the United Kingdom Islands and Colonies.

Local Consultative Councils

THE public is gradually awakening to the modern dangers of centralisation and the whittling down of democratic local organisations. A good example of this tendency is to be found in a new set of regulations which came into operation on 3rd May, 1948. Made under s. 7 of the Electricity Act, 1947, they are called the Electricity (Consultative Council) (Areas) Regulations, 1948, and in an explanatory note they are described as regulating the chairmanship, terms of membership and proceedings of consultative councils in the areas for which Area Boards are established under the Electricity Act, 1947. Although the powers of the council are, as stated, merely consultative, and although they consider matters referred to them by consumers and area boards, their members and chairman are appointed by the Minister, and not as one might expect in a democratic country, by local election. Such elections could easily be held on the same day as the local authority elections. It would be a relief in these days to see any legislation, however minor, which showed any sincere respect for democratic processes.

The Blood Test

THE blood test has been regarded in England as a useful proof of the negative in paternity cases. It has its limits, because refusal to undergo a blood test results in no legal inference of knowledge as to paternity, while on the other hand the test itself only establishes a negative when it establishes anything at all. The *New York University Law Quarterly Review* for January, 1948, contains some useful notes of American experience and precedents on the matter. The insufficiency of American precedents is attributed to the lack of judicial power to compel the test, because the exercise of such power would involve assault and battery and an invasion of liberty (*Bednarik* v. *Bednarik*, 18 N.J. Misc. 633). Some courts, the writer stated, have frequently resorted to more drastic remedies. Other courts have held blood test exclusion inconclusive and merely to be weighed with other evidence (*Berry* v. *Chaplin*, 169 P. 2D, 442). This decision, however, appears to have been based on the fact that it was not so declared by the code. The writer concludes that there is a strong case for legislation, because the test affords an improperly accused man an almost 55 per cent. chance of conclusively proving his innocence.

Rent Tribunals' Work Goes On

THE latest figures concerning the work of rent tribunals, issued by the Ministry of Health on the 19th May, show continued activity. During the first three months of 1948 a total of 3,892 new cases were referred to the seventy-seven rent tribunals in England and Wales, making a grand total of 22,773 cases since the setting up of the first tribunal under the Furnished Houses (Rent Control) Act, in June, 1946. Decisions were given in 2,180 cases; in 773 cases the applications were either withdrawn, or the tribunal decided that the Act did not apply to them; and 1,574 cases were outstanding at the end of the three-month period. The total number of cases decided now amounts to 14,990. Rent reductions were ordered in 1,545 of the new cases heard during the three-month period, and increases were approved in only 32 cases. Existing rents were approved in 320 cases, and the remainder were dismissed. Since the first tribunal was set up rents have been reduced in 10,665 cases and increased in 174 cases, while 2,008 rents have been approved. Of the decided cases 1,239 have since been reconsidered by the tribunals—226 of them in the last three months—on the ground of change of circumstances. This has resulted in rent reductions in 104 cases (11 between January and March, 1948) and increases in 521 cases (82 between January and March, 1948). London tribunals remain among the busiest in the country. At the end of March, Paddington had very nearly reached 3,000 references and Stepney and Hammersmith were both over 1,000. Outside London, Birmingham (two tribunals) had over 800 cases, Leeds, Manchester and Brighton each over 500, and Coventry and Portsmouth over 400 references each.

Annual General Meeting of The Law Society

THE annual general meeting of The Law Society will be held at the hall of the Society, on Friday, 2nd July, 1948, at 2 p.m. The following members of the Council retire by rotation and, as far as is known at present, will be nominated for re-election: Mr. BARROW, Mr. COLEMAN, Mr. DAVIES, Mr. FARRER, Sir HUGH FOSTER, Mr. MADDOX, Mr. MARSHALL, Mr. PEPPIATT, Mr. PITT-LEWIS and Mr. YEAMAN. There are five other vacancies caused by the resignations of Sir RANDLE HOLME, Sir ARTHUR MORGAN and Sir ARTHUR FFORDE, and by the deaths of LORD HEMINGFORD and Mr. RUTLEY MOWLL.

SOME CONVEYANCING POINTS UNDER THE TOWN AND COUNTRY PLANNING ACT, 1947—II

In the first part of this article (*ante*, p. 238) an attempt was made to show what town planning matters can be discovered by making the usual searches. The point was made that too much reliance should not be placed on local searches, because many orders restricting the use of land, if they are registrable at all, require registration very late in the day. It was suggested therefore that certain specific inquiries should be addressed both to the local authorities concerned and to the vendor. In this article it is proposed to say something about conveyancing in the transitional period, and to follow this with some notes on conveyances and leases.

Transactions in the transitional period

Even those with the barest acquaintance with the Town and Country Planning Act, 1947, will know that in some circumstances an owner of land has a claim for compensation for loss of development value. This claim is against what has often been described as a "global" sum of £300,000,000. The right to make such a claim is only of importance when property has considerable development value, for small claims are excluded. (Under s. 63 no claim is possible if the development value does not exceed an average of £20 per acre and one-tenth of the "restricted value.") Where property has considerable development value, however, and is being sold about 1st July, 1948, the conveyancer must remember that the right to claim vests in the person who is on 1st July, 1948, the owner of the interest in question (s. 64 (1)). Let us suppose for example that V has agreed to sell a building site to P for £600, which is its pre-1947 price, i.e., its price in the market before anyone had heard of the 1947 Act. If, for one reason or another, completion of the purchase is delayed till after 1st July, V will get the right to claim for loss of development value, for he is still on the appointed day the owner of the land. P, on the other hand, when he comes to develop, will be liable to pay a development charge. If the parties had the matter in mind at all, they probably intended that P should get the right to claim for loss of development value, to compensate him for having to pay the development charge. The solicitor's main difficulty in these cases is likely to be to discover what the parties meant, and what the purchase price represents. Acting for a purchaser, however, the solicitor should not lightly allow a vendor to get the best of both worlds, i.e., a price on the old basis which includes development value *and* the right to claim for loss of development value under Pt. VI. In such cases he should provide in the contract that if completion takes place after 1st July, 1948, the vendor will do what is necessary to assign to the purchaser his right to receive a payment under Pt. VI of the Act. The right to receive compensation is personal property and may be assigned as such. The actual assignment can be done in the conveyance, though purists may prefer a separate document. Notice of assignment must be sent to the Central Land Board (s. 64 (2); see *ante*, p. 264). Of course if completion takes place before the appointed day, the purchaser automatically becomes entitled to claim, as he is the owner on 1st July. The same situation may arise in reverse, as will be obvious. For the reader who is now unduly perplexed, let it be emphasised that all the above is only important when the property has *considerable development value.*

Conveyances

It can be said straight away that a purchaser's solicitor has two main objects to bear in mind. He has to try and avoid purchasing in ignorance (*a*) property the use of which has been restricted or controlled by the planning authority, or (*b*) property on which development without permission has taken place.

There are, of course, remedies for non-disclosure but sometimes, as conveyancers were recently reminded, rescission of the contract will be the only relief that can be obtained (*Gilchester Properties* v. *Gomm* (1948), 92 Sol. J. 220). For this and other reasons it seems desirable to make as full inquiries before contract as possible. Some idea of the steps which should be taken to achieve the first object has been given in the first article, i.e.,(1) the usual searches, (2) requisitions of the vendor, (3) inquiries of the local authorities concerned. It is not proposed to put forward any model form of general requisition on this topic, partly because such a general requisition would probably produce an equally vague general and unsatisfactory reply, and partly because there can be no substitute for some rudimentary knowledge of the powers of planning authorities to restrict and control the use of land. One need not be a town planning expert to address suitable specific inquiries to the vendor and the local authorities, as to the various matters in Pt. III of the Act.

As regards the second object (*b*), a short scrutiny of ss. 24 and 74 will convince anyone that the penalties for unauthorised development are both effective and unpleasant. A wise man will see to it that he has a proper physical inspection of the property carried out by someone competent to say whether development as defined in s. 12 of the Act has lately been carried out (enforcement action is possible within four years of the development taking place). In addition a requisition should be put in as to whether any development, as defined in the Act, has taken place since 1st July, 1948, or whether any existing development contravened previous planning control—the wording in s. 75 should be followed in drafting the latter part of this requisition. It may also be relevant to ask whether the land is subject to any development charge.

It is suggested that not every purchaser will require a full set of requisitions, a physical inspection of the property and so forth. What may safely be omitted, however, can only be decided by a practitioner with a basic knowledge of the Act. Suppose, for example, that A buys a house with a view to converting it into flats. In this case the chief effort might be directed towards investigating the provisions of the development plan (ss. 14 (1), 36) and whether any previous application for permission to convert had been made (s. 14 (5)) and if so, with what result.

Again, in the case of the purchase of an ordinary residential dwelling-house, a physical inspection of the property would hardly be required; but it would be different if there were numerous outbuildings. At the outset it is suggested that it is better to be cautious, even if one's inquiries are rather over-elaborate. It should not be forgotten that such a simple thing as the making of means of access to or from a highway, e.g., for a car, constitutes development, and this might be done in ignorance by almost any vendor of a dwelling-house.

Leases

In drafting leases it must be remembered that a tenant who alters the existing use of his premises might call down the wrath of the planning authority not only on his own head, but also on that of his landlord (see s. 24—enforcement notices on occupiers and owners). In some cases the alteration of use would be a breach of the normal covenant "to use only as a private dwelling-house," or as the case may be, and the carrying out of actual operations would often offend the provisions as to making additions or alterations to the property. Further the landlord has a statutory right to recoup himself from the tenant, if he has to put up the money to ensure compliance with an enforcement notice (s. 24 (2)). In spite of all this, it may be desirable to include a covenant by the tenant not to carry out any "development" on the property.

For somewhat similar reasons a person offered the tenancy of a newly completed flat in a converted house should strictly ensure that the conversion was approved. This illustrates a general principle. Wherever the use of premises is to be altered, both landlord and tenant must be on their guard to see that the proposed new use under the tenancy does not constitute "development," or if it does, that planning permission is obtained.

J.K.B.

Taxation

TAXATION IN LEGAL PRACTICE—X

COMPANIES—II

THE previous article in this series (*ante*, p. 266), in its treatment of r. 20 of the General Rules, emphasised that the tax the burden of which that rule authorises a company to pass on to its shareholders by way of deduction from dividends need bear no relation to the tax charged upon the company itself in respect of its profits. It may be more, as was pointed out in *Cull's* case [1940] A.C. 51, but it may equally, if the company does not distribute all its profits, be considerably less. So far as income tax at the standard rate is concerned, non-distribution of profits does not affect the Revenue. Though company and member are two distinct entities, they are treated as if they shared an income which is charged to tax only once. Surtax, too, is charged only once, but it is charged on an individual and not on a corporation. It is computed on the individual's total income including dividends from a company. The loophole is obvious. Let the company retain profits instead of distributing them, and the total incomes of the members will be so much smaller, while the material benefit of the profits earned will not be lost to the members since the retention will augment the resources of the company—resources which may in the case of certain companies remain at the disposal for practical purposes of a few private individuals.

This was the chief of the devices connected with companies by which surtax payers sought so to order their affairs that the tax attaching under the appropriate statutes should be less than it otherwise would have been, to adapt words of the late Lord Tomlin. The Revenue usually accepts this sort of challenge, and the successive provisions by which Parliament has contrived to circumvent the more extreme effects of the taxpayers' ingenuity in this direction are the subject of this article. The scheme of the provisions is essentially a straightforward one. Refinements in planning avoidance of tax, however, have led to counter-refinements of legislation. It has been necessary to amend the original s. 21 of the Finance Act, 1922, in no fewer than five later years, 1927, 1928, 1936, 1937 and 1939. The object of the writer here, as indeed throughout this series, is not to give an exhaustive account of the subject—that would be impossible within the space available—but to describe briefly the essential plan of the sections with their explanatory case law in such a way as to suggest its relationship with general legal principles and practice.

A short summary will best display the vital points :—

1. *Companies affected.*—Any body incorporated in any part of the United Kingdom under any enactment—

(*a*) being under the *control* of not more than five persons apart from relatives, nominees and certain other persons ; and

(*b*) not being (i) a company controlled by another United Kingdom company not itself affected, or (ii) a company in which the public are substantially interested. This implies, of course, more than merely a public company in the usual sense of that term. By definition it depends on two cumulative conditions, the beneficial holding by the public of a minimum percentage of ordinary voting power at a given time, and quotation and dealings on a United Kingdom Stock Exchange (s. 21 (6) of the 1922 Act, as amended by Finance Act, 1927, s. 31 (3)).

Control is gauged by alternative factors—the exercise of or the ability to exercise control over the company's affairs, particularly by entitlement to acquire a share or voting majority ; the possession of share capital which would entitle the five or fewer persons to the greater part of the income if the whole of it were distributed ; or the liability of the five or fewer to have the greater part of the income apportioned to them on the hypothesis that the company is affected by the sections (s. 21, extended by Finance Act, 1936, s. 19).

2. *Condition precedent.*—Section 21 is expressed to turn on a condition (" the event upon the happening of which the powers conferred come into operation " : *per* Lord Russell of Killowen in *F. H. P. Finance Trust, Ltd.* v. *C.I.R.* [1946] A.C. 38), namely, that it appears to the Special Commissioners that the affected company has not within a reasonable time after the end of an accounting period distributed a reasonable part of its actual income for the period having regard to the current requirements of its business and to any other necessary or advisable requirements for the maintenance and development of the business. The " actual income " taken is to be that for the period in question, which excludes, for instance, a previous year basis, but is otherwise to be computed as for income tax (Finance Act, 1922, Sched. I, para. 6). The onus of showing that non-distribution was unreasonable is on the Crown, and the existence of a contractual obligation to deal otherwise than by distribution with the income may negative unreasonableness, even though a distribution would not have been actually unlawful (*Thomas Fattorini (Lancashire), Ltd.* v. *C.I.R.* [1942] A.C. 643).

Since 1936, however, investment companies, defined as those whose income consists mainly of investment income, are, if they are otherwise within the scope of the legislation, marked out for especially severe treatment. And by s. 14 of the Finance Act, 1939, there is now no necessity to see to the fulfilment of the condition of unreasonable withholding of distribution ; the Legislature's counter-measures are to be put into operation automatically in respect of the investment income of such a company.

3. *The counter-measures.*—These are—

(*a*) A " direction " by the Special Commissioners by notice in writing that the company's actual income for the period shall be deemed to be the income of its members. The direction may be given either after the Special Commissioners have required particulars from the company or without this preliminary.

(*b*) An " apportionment " of the whole income (not merely a reasonable part of it : see the *Fattorini* case) among the members according to their respective interests. There is a wide definition of " member " for this purpose, and the members' interests are not merely their normal income rights. This part of the process is more than a notional declaration of dividend. " In my opinion," says Lord Russell (*loc. cit.*), " the Commissioners . . . should determine who are the persons of whom it can be said (1) that they fall within the definition, and (2) that they are the persons who, in view of all their interests in the company, are the persons really interested in the income in question and in what proportions." Where the company is an investment company the definition of " member " is wider still. It includes a loan creditor, for instance, thus covering those cases where debentures instead of shares were taken by those whose assets were acquired by a company (see *per* Sir Wilfrid Greene, M.R., in *C.I.R.* v. *Kered, Ltd.* [1939] 1 K.B. 402). In this event, too, the Special Commissioners may apportion to a person even though he be not a member within the extended meaning of the word if in fact he is able by any means whatsoever to secure that income or assets of the company will be applied for his benefit ; or if he has transferred to the company assets not adequately represented by his interest and is likely to be able to secure such application by means of the potential control of executive power (Finance Act, 1939, s. 15).

(*c*) An assessment to sur-tax on the member in the name of the company of the amount so apportioned, less any sum already in fact distributed to him. If a distribution is made after an apportionment and includes apportioned income, the sum distributed does not again come into assessment (s. 21 (4)). Payment of the tax assessed pursuant to an apportionment may be recovered from the member or, if he does not elect to pay, or, having so elected, does

not pay, from the company, with a further right over against the member in case of default by the company.

4. *Safeguards and appeals.*—A company may set a time limit upon the Commissioners' action by itself forwarding accounts (Finance Act, 1928, s. 18). Moreover, a company is given unusually ample opportunity for contesting the Special Commissioners' views and for arresting the process of direction and apportionment. In the first place (Finance Act, 1922, Sched. I, para. 5), the company may, within twenty-eight days of the direction or of the notice requiring information, send to the Special Commissioners a statutory declaration denying that there will be any avoidance of sur-tax. This obliges the Commissioners, if any further action is to be taken, to certify to the Board of Referees that they see reason to proceed. The declaration may be answered by a counter-statement made on behalf of the Commissioners of Inland Revenue. The documents to date are then considered by the Board of Referees, whose decision whether or not they disclose a *prima facie* case is final.

In addition, a company aggrieved by a direction or by an apportionment may appeal to the Special Commissioners themselves, even though the Board of Referees may have declared a *prima facie* case made out. This appeal is heard *viva voce*. There is a further right of appeal available to either party by way of rehearing before the Board of Referees. A case for the court's opinion may be required at either appeal, but on a point of law only. The question of the reasonableness or otherwise of withholding distribution is one of fact (*Carnarvon Estates Co., Ltd.* v. *C.I.R.* (1935), 19 Tax Cas. 643). Only the company may appeal against either a direction or an apportionment; a member has no right to do so (*Burston* v. *C.I.R.* (*No.* 2) (1945), 61 T.L.R. 391), though an individual member may, of course, appeal in due time against a resulting sur-tax assessment on him.

5. *Special cases.*—Besides those connected with investment companies, which are particularly susceptible of eccentricity in structure and control, the legislative scheme has from time to time sprung other leaks to which the Legislature has been prompt in applying a suitable bung. Interconnected companies were found to need special treatment, because it was of no advantage to the Revenue to have undistributed income apportioned to a second company, at which point (the apportioned sum not being part of the actual income of the second company) the original Act was found to have spent itself. The 1927 Act accordingly provided, by s. 32, for sub-apportionments in such cases. Only one direction is necessary, since only one parcel of actual income requires to be transmogrified by the mystical process of deeming into that which it is not; but there are to be as many apportionments as may be necessary until the income finds its notional way into the hands of an individual. The subsequent assessment is made on the individual in the name of the first company which, after all, has actually received the income. There are also special provisions with regard to the income of a company for an uncompleted accounting period immediately before winding up (Finance Act, 1927, s. 31).

Lord Atkin, in the *Fattorini* case, *supra*, referred to this legislation as highly penal; it has also been called punitive. To conclude, then, here is a quotation from a recent speech of Lord Thankerton dealing with the proper canons of construction of an analogous statute: "Counsel are apt to use the adjective 'penal' in describing the harsh consequences of a taxing provision, but, if the meaning of the provision is reasonably clear, the courts have no jurisdiction to mitigate such harshness. On the other hand, if the provision is reasonably capable of two alternative meanings, the courts will prefer the meaning more favourable to the subject. If the provision is so wanting in clarity that no meaning is reasonably clear, the courts will be unable to regard it as of any effect" (*C.I.R.* v. *Bladnoch Distillery Co., Ltd.* [1948] 1 All E.R. 616, at p. 625). There is no ground for thinking that, properly approached, any of the undistributed profits provisions qualify in their present form under the last sentence.

"Z"

Divorce Law and Practice

NON-COHABITATION CLAUSES IN MAGISTRATES' ORDERS

THERE can be few members of the legal profession who have not at one time or another been struck vehemently by the appalling consequences that may sometimes befall their clients if they themselves make serious mistakes. In other branches of the law some pecuniary or purely temporal loss is the usual consequence of such inadvertence, but in divorce the effects of a mistake by the legal representative of a client may be prolonged unhappiness for the client and frequently for other people as well—unhappiness and misery which might well have been avoided had the mistake never been made. Further, one of the consequences of such mistakes frequently is that in order to avoid the effects of such unhappiness the parties cast to the winds some of the Christian principles of morals in which they have been brought up to believe. Of all the pitfalls into which the practitioner may fall perhaps the one that most frequently has disastrous results is the insertion or otherwise of non-cohabitation clauses in magistrates' orders. It may well be said by many readers that this is common knowledge and that no one now allows such mistakes to be made, but the fact remains that cases still come before the courts in which such mistakes have been made, and it is for that reason that in this article it is proposed to study once again the law on the subject. It may be trite law to the majority of practitioners, but it is of such great importance to the clients that mistakes should never be made in this particular matter that it is thought worth while to discuss the subject, if only for the benefit of very few.

The effect of a non-cohabitation clause inserted in a magistrates' order upon a subsequent petition for dissolution on the ground of desertion has been considered in a long line of cases, the first of which was *Harriman* v. *Harriman* [1909] P. 123, which is usually considered to be the leading case upon the subject. It is not necessary to give details of the facts of that case, for it was decided before the statutory changes in the law of divorce which have been made since that date, but for the present purpose it is sufficient to say that in that case a wife applied to the magistrates for an order against her husband that he should pay her maintenance on the ground of his having deserted her and of his having failed to maintain her, and on that order being made a clause was included to the effect that she was no longer bound to cohabit with her husband. In those circumstances it was decided that she could not subsequently petition for divorce on the ground of desertion if she included in the period for which she alleged she had been deserted the period after the making of the order. It is, of course, obvious enough that to say that a husband was guilty of desertion when previously an order had been made saying that his wife need not live with him if she did not wish to do so would be the height of absurdity. The Court of Appeal, when deciding that case, realised that this decision might cause hardship to those who, having once obtained an order including a non-cohabitation clause, subsequently wished to petition for divorce and, therefore, with great foresight, issued a very plain warning to the effect that non-cohabitation clauses should not be inserted in magistrates' orders when the complaint was solely one of failure to maintain the wife. Notwithstanding that plain warning, there have since then been a string of cases in which the non-cohabitation clause has been inserted through error or inadvertence. If one reason more than another can be singled out as a cause of these mistakes, it is the fact that the magistrates' order is normally made on a compendious printed form from which it is the duty of

the clerk to strike out such sentences as do not apply to the particular order that is being made. This form usually includes the words " and it is ordered that the applicant be no longer bound to cohabit with her husband, his wife, the defendant," it being the duty of the clerk to strike out the whole sentence if no non-cohabitation clause is to be inserted in the order, or the words " her husband " or " his wife," whichever is appropriate, if it is intended that a non-cohabitation clause should be inserted in the order. Human nature being what it is magistrates' clerks have before now failed to strike out this sentence when they should have done so, with unfortunate results to the married parties concerned. It would have saved a lot of trouble if these printed forms, instead of including a sentence to be struck out if not required, had included a blank space in which could be written the necessary words if a non-cohabitation clause was required.

However, be that as it may, the effect of the erroneous inclusion of the non-cohabitation clause is shown clearly by three cases. The first, *Mackenzie* v. *Mackenzie* [1940] P. 81, was a case in which, in an undefended petition for divorce on the ground of desertion, it appeared that the petitioner had previously obtained from the magistrates a maintenance order which was in a printed form and included the words quoted above but excluding the words " his wife." The Court of Appeal in deciding this case reaffirmed the decision in *Harriman* v. *Harriman* and held that there could be no desertion so long as there was in existence a magistrates' order which included a non-cohabitation clause. The court, in fact, went further than this for they made it quite clear that their decision would have been the same had they been satisfied that the non-cohabitation clause had been left in the order by mistake, although there was not sufficient evidence to show that that was the case in the case under consideration. But this decision was followed shortly afterwards by a decision of Sir Boyd Merriman, P., as he then was, in *Cooper* v. *Cooper* [1940] P. 204, in which the non-cohabitation clause was left in the order by mistake. It was clear from the evidence and also from the fact that the whole of the sentence quoted above, including both the words " her husband " and " his wife," was left in the order. This sentence as it stood was clearly nonsensical and could only have been left in the order by an oversight. The learned President held that in these circumstances desertion did not cease to run on account of the non-cohabitation clause, and the grounds for his decision would appear to be virtually the same as the grounds for the subsequent decision by the Court of Appeal in *Cohen* v. *Cohen* [1947] P. 147. In that case the justices at the conclusion of a case made an order which did not include the non-cohabitation clause, and subsequently their clerk inadvertently left the non-cohabitation clause in the written order that was issued from the court. It was held that what is effective is what the justices say and the order they pronounce at the conclusion of the hearing. If the subsequent written order made out by the clerk contains matter not included in what the magistrates said then that written order is a nullity.

It is clear from these cases that the courts have done their best to mitigate the consequences of carelessness in drawing up these orders; nevertheless, it is still a matter of the greatest importance that all possible care is exercised when these orders are made. If a mistake is made it is not always easy to obtain evidence as to what the order that the magistrates in fact pronounced was, for, in the nature of things, these problems are usually considered several years after the orders have been made. Difficulties such as were experienced in *Cooper* v. *Cooper* in obtaining the necessary evidence are very likely to arise, and it may not always be possible to avoid the effects of an erroneous clause in this way.

One further point remains to be considered in these cases, the effect on the period of desertion of a successful application to strike out a non-cohabitation clause. This was considered in *Gatward* v. *Gatward* [1942] P. 97, where a wife obtained an order against her husband which included a non-cohabitation clause, and eight years later—with the avowed intention of enabling her to obtain a divorce—she applied successfully for the clause to be struck out; and three years later she petitioned for divorce on the ground of desertion. It was held in this case that the husband's desertion began to run again from the time that the order was rescinded, but it was made abundantly clear in the judgment that this did not happen automatically, but that it was necessary to adduce some evidence to show that the husband from the time that the clause was deleted had intended to continue his desertion. This decision was taken one stage further by *Green* v. *Green* [1946] P. 112, where the wife, having been deserted by the husband for two years prior to an order including a non-cohabitation clause being made in her favour, subsequently had the clause struck out and then, after the lapse of a further period of one year, petitioned for divorce. It was held that she could add the two years' desertion before the making of the order to the one year after its rescission and thereby obtain her decree. But again it must be emphasised that it was clear that the husband had no intention of returning after the order was struck out. Finally, in the recent case of *Thory* v. *Thory* (1948), 92 Sol. J. 155, it was held by Jones, J., that where the justices had had no grounds for including a non-cohabitation clause but had, in fact, done so, then the effect of a subsequent order that the clause be struck out was that the clause should be struck out as from the date of the original order.

It is hoped the foregoing has helped to show that the practitioner is well advised to be very careful indeed in advising on these matters for, though a mistake is not necessarily irreparable, nevertheless the mistaken inclusion of a non-cohabitation clause may later cause great distress and injustice to one's client.

P. W. M.

A Conveyancer's Diary

ANNUITIES AND TAXATION

In commenting on the Finance Bill a fortnight ago I stated the effect of certain concessions contained in cl. 52 broadly as follows: Any payment made out of the capital of a trust fund to a beneficiary escapes liability, since it is not income for income tax purposes. I gave as examples an annuitant who is entitled to have his annuity made up out of capital if the income proves insufficient to pay it in full, and an advance made out of capital. It has been pointed out to me that payments made out of capital in augmentation of income are income for income tax purposes in the hands of the recipient, and the purpose of cl. 52 (3) is therefore clear; any such payments will be taken into account in ascertaining the total income of an individual, but not in ascertaining the amount of his investment income.

Capital advances made under a power of advancement seem, however, to be on a different footing. There is no authority which establishes that such advances are not chargeable to income tax, but the practice has, I think, always been to treat them so. It is, therefore, worth considering whether this difference in treatment may not be put to use in another connection.

A very common problem that besets testators is the best means of assuring a reasonable income for the surviving spouse where the estate is not large. It is out of the question to predicate interest yields over a period of years with any certainty, and few testators are in the fortunate position of being able to select as their trustees persons whose knowledge of the stock market will enable them to invest the trust fund

to the best advantage. In particular, testators who appoint a trust corporation as trustee cannot look forward to any of those speculative transfers of investments which, even to-day, sometimes produce a good rate of profit by capital appreciation. In these circumstances it is often advisable to insert a provision that, if the income of the trust fund should fall below a certain figure in any year, the income of the beneficiary should be brought up to the desired level by resort to capital. But in view of the fact that payments made out of capital in augmentation of income will be liable to income tax, the common form clause may, I think, be varied with advantage. Reference to the cases shows that any payment made out of capital in such circumstances as to invest the payment with an income quality is an annual payment for tax purposes.

In *Brodie's Trustees* v. *Inland Revenue Commissioners* (1933), 17 Tax Cas. 432, the testator directed that the income of a fund should be paid to his widow for life, provided that if in any year the income of the fund should be less than £4,000, the trustees should raise and pay to the widow out of the capital such a sum as would, with the amount of such income, make the total sum of £4,000 for that year, the intention being that the income payable to the widow should in no case be less than £4,000 a year. The income of the fund fell below the stipulated level, and the trustees duly made it up over a period out of capital. Finlay, J., held that the sums paid out of capital were income in the hands of the widow and should be brought into charge to tax. In his view, the question whether these sums should be treated as capital or income for income tax purposes depended on the nature of the payment. Two factors deserved consideration from this point of view, (*a*) the source of the payments, and (*b*) the circumstances in which they were made. As regards the source, if in such a case both the income and the capital belonged to the same person, then a payment of a portion of the capital to the person beneficially entitled thereto would, no doubt, properly be regarded as a capital payment not subject to tax; but if the capital belongs to some other person (as it did here) and the payments are made in such circumstances and in such a form that they reach the beneficiary as income, then such payments must be treated as income. In this case there was no doubt about the testator's intention, for he had said in so many words that the whole sum paid to the widow in any year should be her income for that year; but I do not think that too much emphasis should be placed on this particular circumstance.

Brodie's case has been followed, and carried further, in many subsequent decisions. It is sufficient to mention one of these, since it conveniently exemplifies the extent to which this well-settled principle is now applicable. In *Cunard's Trustees* v. *Inland Revenue Commissioners* [1946] 1 All E.R. 159, a decision of the Court of Appeal, *Brodie's* case was expressly approved. The payments in question arose in this way. A testatrix directed her trustees to permit her sister to live in a residence rent free, and also left the sister an annuity. For the purpose of ensuring that the sister should be able to live in the residence in her customary degree of comfort, the testatrix directed her trustees to apply such part of the capital of her residuary estate by way of addition to the sister's income as they should in their absolute discretion think fit, and, moreover, any capital so applied was directed not to be replaced out of the income of the estate in any subsequent year, but to be treated as an additional bequest to the sister. Various points were taken on behalf of the sister in a vigorous attempt to distinguish this case from any previously decided, but without success; and the decision of the court is worth consideration in two respects which are common, both to this case and to almost any direction to make up an annual income payment out of capital. It was held, firstly, that the fact that resort to capital was entirely a matter of the exercise of the trustees' discretion did not render such payments voluntary payments so as to escape charge to tax in the hands of the beneficiary under Sched. D. Lord Greene relied, in this connection, on a passage in *Williamson* v. *Ough* [1936] A.C. 384, at pp. 391–2, where Lord Russell of Killowen had laid it down as well settled that, in the case of an annuity charged on the income and corpus of a fund, all moneys raised out of corpus to provide the annuity are assessable income. And it was further held that, although resort might not be made to capital year by year, any payments made out of capital were nevertheless recurrent, and so chargeable. This latter point had, indeed, been so decided years before, in relation to payments on guaranteed shares in a company, in *Moss Empires, Ltd.* v. *Inland Revenue Commissioners* [1937] A.C. 285, and it is quite clear that a contingent and variable sum may none the less be an annual payment for the purposes of Sched. D.

All this may be familiar ground, and it would not be worth covering again if there were no alternative method by which an annual sum could be secured to a beneficiary, and at the same time some alleviation of the tax burden held out as a prospect. I believe that this end can be reached by use of an express power of advancement, framed in suitable terms. The form I would recommend for this purpose is a direction, contained in one clause, to pay the income of the fund in question to X for life (or as may be), followed by a power (contained in a separate clause) for the trustees, on the request in writing of X, to raise and pay out of the capital of the fund such sum or sums as the trustees may in their absolute and unfettered discretion think fit for the benefit of X, "Provided that any sum or sums so raised and paid for the benefit of X shall not in any one year exceed the amount by which the income paid to X under clause [ ] hereof in that year falls short of £*y*." Such a clause may conveniently be incorporated with any other provision in the instrument conferring a power of advancement on the trustees.

This form differs from the customary advancement clause only in that the *quantum* of the amount which may be advanced is fixed, not absolutely, but by reference to future events. As such, I think it has a fair chance of passing as, in essentials, undistinguishable from the normal power, and it has never been suggested that an advance of capital made either under the statutory power or under an express provision for advancement in the normal form is subject to tax in the hands of the beneficiary so advanced. Nobody can guarantee the efficacy of any form until it has passed the scrutiny of the courts, but this device seems to me to have a fair chance of success. The suggestion amounts, of course, to no more than a choice of phraseology, but no conveyancer need be reminded of the importance of that. And for those who believe that there is no magic in words, I would recommend a brief comparison between the decisions in *Re Pettit* [1922] 2 Ch. 765, and in *Re Jones* [1933] Ch. 842.

"A B C"

Landlord and Tenant Notebook

RESTRICTIONS ON ALIENATION BY REFERENCE TO CLASS

THE Supreme Court of the United States of America has recently delivered a considered judgment declaring that restrictive covenants designed to prevent the acquisition of interests in property by negroes (common in Chicago and elsewhere) are unenforceable. These covenants "ran with the land" in the way familiar to English lawyers (see, for instance, *Spicer* v. *Martin* (1888), 14 App. Cas. 12, in which a tenant was granted injunctions restraining his landlord from authorising the carrying on of, and against a tenant of other property from carrying on, a business on that property).

But the basis of the Supreme Court's decision was their interpretation of provisions of the "Fourteenth Amendment" to the Constitution. This was the amendment made just after the Civil War and has, of course, no counterpart in English law, though it may provoke the thought that if our cousins had taken more notice of the decision in *Sommersett's* case (1772), 20 State Tr. 1 (slave purchased in the then colony of Virginia released under *habeas corpus*) much unpleasantness might have been avoided.

In England, covenants prohibiting alienation to any member of a class as such have, I believe, not yet resulted in litigation. Covenants against carrying on trade generally are, of course, well known, and that they will be strictly enforced was recently illustrated once again in *Tendler* v. *Sproule* [1947] 1 All E.R. 193 ("paying guests" in "private dwelling-house"). Then there are covenants barring specified trades, such as the carrying on of a fried fish shop; at one time, indeed, draftsmen seemed to vie with one another in visualising activities which might upset neighbours. Taking a decision from the same year as that of the above-mentioned *Spicer* v. *Martin*, and one concerning property in the same select residential area of London, one finds that in *Tod-Heatly* v. *Benham* (1888), 40 Ch. D. 80 (C.A.) the court had before it a covenant which named, *inter alia*, the trades or businesses of a tallow-chandler or melter of tallow, soap-boiler, lamp-black maker, salammoniac manufacturer. But such covenants would not, of course, militate against the letting or assigning of a dwelling-house to a melter of tallow or manufacturer of salammoniac or frier of fish, or even make it illegal for an occupant to melt tallow or fry fish on the premises.

But the qualified general covenant against alienation—consent essential, but not to be arbitrarily withheld—has also been a fruitful source of litigation, and, perhaps, the nearest we have got to objection by reference to class is what happened in the case of *Mills* v. *Cannon Brewery Co., Ltd.* [1920] 2 Ch. 38. The premises concerned in that case were a London public-house (in Charing Cross Road), and the time, it should be remembered, was not long after the determination of the first German War. For, within less than a year after the Armistice, the executors of a deceased under-lessee, bound by a covenant not to assign without the written licence of mesne lessor and head lessor, that of the mesne lessor not to be arbitrarily withheld if that of the head lessor was granted, agreed to sell the under-lease to a naturalised German. And while the head lessor raised no objection, the under-lessors, who were the defendants in the action (for a declaration) found several; and these included the consideration that "during the past few years they had considered it inadvisable to permit applicants who were not natural-born British subjects to become occupiers of their houses."

But the point round which most argument revolved was whether in view of the fact that the decision had been honestly made after deliberation, the withholding could be considered "arbitrary." In the light of older authorities, it was held that "arbitrarily" meant the same thing as "unreasonably" (the adverb later favoured by the Landlord and Tenant Act, 1927, s. 19 (1)); and, as regards the German name and origin of the purchaser, the defendants, while not abandoning the point, refrained from arguing it. And P. O. Lawrence, J., did not think much of it when he held that the name and origin of the purchaser did not constitute a reasonable cause for withholding the licence to assign.

More recently, a sub-letting of a flat to a foreigner was objected to, under a similar covenant, in *Parker* v. *Boggon* (1947), 91 SOL. J. 85; not, however, because the proposed sub-tenant was an alien, but because, being an official of a foreign embassy, he enjoyed diplomatic immunity. It was urged that landlord and superior landlord would be unable to exercise powers of re-entry, for instance. This did not appeal to Macnaghten, J., who considered that if a diplomatically privileged person did not discharge his obligation (which the learned judge thought unlikely) his Government would. Part of the judgment is open to some criticism, namely, where it is said that no sovereign State could afford to allow its representatives to default; the suggested criticism does not concern the principle, but is that if there be a question whether or not its agent had defaulted, how is the sovereign principal to ascertain the truth when it refuses to allow that question to be tried? However, this is far from my subject; what I have been endeavouring to bring out is this: the two decisions discussed suggest that a refusal of consent based on the fact that the proposed assignee or sub-tenant belongs or does not belong to a particular section of the human race is likely to be held to be unreasonable.

But it is, of course, possible for landlords to stipulate for an absolute covenant not to assign, etc., to any member of a named class; it might be vegetarians, racehorse owners, bimetallists, red-haired persons, or even solicitors. And, in fact, a company owning a number of blocks of flats in the metropolis does let them by agreements which prohibit, absolutely, the assignment or sub-letting to persons of colour. In the absence of a constitution, the only chance of impugning such a provision would be the very doubtful one suggested by "public policy."

So far written, our issue of 22nd May arrived and reports, I observe, under the heading of "Tenancies (Racial Discrimination)" (92 SOL. J. 285), an answer to a "question in the House" which shows that the Attorney-General shares the view that legislation would be necessary if such restrictions are to be made illegal. The question may have been inspired by the recent U.S.A. Supreme Court decision, but is wider in scope, for the inquiry included whether anything could be done by legislation to make it illegal on the part of any landlord to *refuse a tenancy* to anyone because of his colour; the Supreme Court's decision, I understand, cannot and does not make it obligatory on anyone affected to sell or let to a negro. So far, it is only public bodies whose freedom has been curbed, in the way suggested, in this country; housing authorities who are, in the words of Lord Greene, M.R., in *L.C.C.* v. *Shelley* [1947] 2 All E.R. 720 (C.A.), "trusted by Parliament to avoid committing the sort of social or economic crime, or whatever one likes to call it, that the ordinary landlord was expected to commit" and have been authorised to provide and make reasonable charges for the tenancies of living accommodation for persons of the working classes; an expression used in the Housing Act, 1936, but taken over from earlier enactments and, as Denning, J., said in *Green* v. *Minister of Health* [1947] 2 All E.R. 469, "quite inappropriate to modern social conditions."

R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

WHEN Caroline of Brunswick was married to George, Prince of Wales, in 1794, the union was a failure from the very start. Scarcely more than a year from her arrival in England they were separated and, in 1801, she settled at Blackheath. By nature she was reckless, impulsive and indiscreet, and her enemies duly made capital out of the material with which she thoughtlessly provided them. An action which caused more trouble than any other was her adoption, in November, 1802, of William Austin, a poor woman's four months' old baby. For this "Willikins" she maintained a constant affection and, indeed, she finally left him all her property. Soon it was rumoured that the child was her own, born out of wedlock, and to this certain foolish remarks of her own seemed to give colour. Finally, on 29th May, 1806, George III initialled a document appointing Lords Commissioners to inquire into this matter and other alleged improprieties. Lord Chancellor Erskine headed the commission, which included Lord Chief Justice Ellenborough. Sir Samuel Romilly, then Solicitor-General, acted as secretary, writing down the depositions of the witnesses. The report was finally drawn up in July and substantially exonerated the Princess. Only on one point, as regarded her conduct with a

Captain Manby, did they suggest that there was material for further consideration. She asked for no further investigation. She learnt nothing from this incident. When she went on her travels abroad she proceeded by her behaviour to furnish enough material for the divorce proceedings which her husband, when he became George IV, instituted. Though they proved abortive, she really brought them on herself.

REFERENDUM ON CIRCUITS

THE Bar Council is holding a referendum on the circuit system and it will be interesting to discover the considered judgment of the profession on this ancient institution. That the former lustre of the circuits has paled before the rush of modern communications is undeniable. As long ago as 1911 the author of a book on the Western Circuit could observe that the legal reformer had waged war on the system, at any rate for the last thirty or forty years, but hitherto without complete success. When it flourished in all its purity, the rhythm of professional life carried the whole of the Common Law Bar *en masse* out of the capital and away to the shires twice in the year. The courts in Westminster Hall were closed and deserted, and during the assizes, London offered no counter-attractions to the busy leader. On their travels the members of each circuit composed a closely knit community, sociable and convivial—in a sense a perambulating replica of the semi-collegiate habits of Hall life in an Inn of Court. The past hundred years have changed all that. More or less continuous sittings in London; extended assizes in the great provincial centres; the formation of resident local Bars; the physical possibility of conducting a case in London one day and at the other end of England the next—all these have tended to break the cohesion of the circuits.

STILL WITH A FUNCTION

THAT's all perfectly true and very sad for the rigid traditionalist. But allow for it all in full and Wales is still not East Anglia or anything like it. The foundation and framework of the circuit system is soundly based on the solid realities of local individuality. Adaptation and not abolition is the thing. To pound all provincial practitioners into one indistinguishable mass might have certain theoretical advantages, but it would be about as sensible as pouring the port into the sherry and the coffee into the tea. Anyhow, if things were no longer sorted out on known and familiar lines, they would sort themselves out in more mysterious ways. "The larger the college, the smaller the cliques," used to be a university saying. Nor in human affairs should one discount the collective experience embodied in continuity. Again, as long as the circuits survive they will not wholly forget that convivial fellowship and sociability which is "functional" because human nature is so constituted that it functions all the better for their presence and all the worse without them. Every page of the late Lord Justice MacKinnon's book "On Circuit" testifies how closely the system is linked with the British way of life and, despite all changes, there must be many who still look back with the eyes of the old member of the Western Circuit who wrote:

> "The Table Round in Winton's Hall,
> Fair Dorchester and bleak Devizes,
> The front of Wells—I see them all
> When still in dreams I go assizes.
> So here to all who shared the strife
> By towers of Exe or spire of Sarum
> I pledge, in hope of larger life,
> The Circuit toast '*Cras Animarum*'."

NOTES OF CASES

HOUSE OF LORDS

LIMITATION: CLAIM AGAINST RAILWAY

Pegler *v.* Railway Executive

Lord Thankerton, Lord Porter, Lord Uthwatt, Lord du Parcq and Lord Oaksey. 19th March, 1948

Appeal from the Court of Appeal (63 T.L.R. 178) affirming Atkinson, J. (62 T.L.R. 474).

The appellant had been employed in the locomotive department of the Taff Vale Railway Co., which was one of the constituent companies amalgamated on the 1st July, 1923, to form the Western group under Sched. I to the Railways Act, 1921. He was taken into the employment of the locomotive department of the Great Western Railway Co., but, owing to a difference, arising on the 14th May, 1924, in the practice of the two companies with regard to promotion, he suffered loss of seniority and consequent direct pecuniary loss for a period by reason of the amalgamation. He claimed compensation on the 2nd March, 1942, and applied to have the amount settled by arbitration. The arbitrator found that he would have been entitled to the amount claimed, but held, subject to the opinion of the court on a special case, that the claim was barred by the Limitation Act, 1939. Atkinson, J., upheld that decision. The Court of Appeal held that the arbitration was not begun until 2nd March, 1942; that the employee's right to claim compensation arose at the moment when his transfer to the service of the amalgamated company took place on 1st July, 1923; that he should have claimed compensation then; and that the claim was barred by the Act of 1939, by s. 2 of which the period of limitation applicable was six years from the date when the cause of arbitration arose. The employee appealed. The House took time for consideration.

LORD UTHWATT—the other noble lords concurring—said that the employee's first contention, that the cause of arbitration arose when the "question" was raised by him, would, if successful, mean that his rights were not barred. It was para. 3 of Sched. III to the Act of 1921, providing that transferred employees should not be placed in a worse position by reason of the transfer, which gave the substantive right, not para. 4, which provided for arbitration and so gave the remedial right. That contention, therefore, failed. The second contention (success in which would mean that the loss suffered from 2nd March, 1936, to 8th May, 1937, when loss ceased, would not be barred) was that the earliest date was the 3rd April, 1933, when the loss resulting from the change in practice became an established fact. That contention also failed. The conditions of new service as a whole resulting from the transfer might well not be ascertained at the date of the transfer; but once the amalgamated company had settled the conditions of service under it, the opportunity for the comparison between old and new conditions arose. The key to para. 3 lay in the words "by reason of such transfer." The change in practice made on 14th May, 1924, was made by reason of the transfer. That (not the 1st July, 1923, as held by the Court of Appeal) was the crucial date. The claim was accordingly barred. Appeal dismissed.

APPEARANCES: *Beney*, K.C., and *Nicholas* (*Pattinson and Brewer*); *Cartwright Sharp*, K.C., *Fox-Andrews*, K.C., and *B. J. M. MacKenna* (*M. H. B. Gilmour*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

EXCESS PROFITS TAX: "BORROWED MONEY"

Inland Revenue Commissioners *v.* Rowntree & Co., Ltd.

Tucker, Somervell and Cohen, L.JJ. 2nd March, 1948

Appeal from Macnaghten, J.

During their standard year the appellant company had the use for the purchase of raw materials of money raised in the following way: they had an arrangement extending over some years with an acceptance house whereby they drew bills of exchange on that house. The house discounted the bills with various discount houses, handing over the proceeds to the appellant company and charging commission. Shortly before a bill thus accepted reached maturity the company had to provide the acceptance house with funds to meet it. Excess profits tax was imposed by the Finance (No. 2) Act, 1939. By s. 13 (3), if the average amount of capital employed in any chargeable accounting period exceeds the average amount employed in the standard period, the standard profits for a full year shall, in relation to that chargeable accounting period, be increased by a prescribed percentage. By s. 14 (2), the average amount of capital employed in a business is to be computed according to Pt. II of Sched. VII to the Act. By para. 2 (1) of the Schedule: "Any borrowed money or debts shall be deducted . . ." The Special Commissioners held that the money so raised by the company was not "borrowed money," being of opinion that in ordinary commercial usage the relationship between the company, the acceptance house and the holders of the bills was not that of borrower and lenders. They relied on *I.R.C.* v. *Port of London Authority* [1923] A.C. 507. Macnaghten, J., held that the money was "borrowed money in the ordinary acceptation of the word." The company appealed.

TUCKER, L.J.—SOMERVELL and COHEN, L.JJ., agreeing—said that the Special Commissioners had decided that the money was not borrowed money, not on some narrow legal meaning to be given to the words, but on their general experience of such matters. It would be impossible to hold as a matter of law that the discount

houses, as holders of the bills, were lending the company money. He (his lordship) agreed with Macnaghten, J., that the acceptance house had not lent the money. Neither had the holders lent money to anyone; they had merely bought the bills. The speeches in *I.R.C.* v. *Port of London Authority, supra*, showed that the words "borrowed money" required the existence of a borrower and a lender for a real borrowing. He was not prepared to differ from the finding of the Special Commissioners as to ordinary commercial usage in the matter. Appeal allowed.

APPEARANCES: *King*, K.C., and *J. H. Bowe* (*John D. Watson*, York); *Sir Frank Soskice*, K.C. (*S.-G.*), and *Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

WILL: SETTLEMENT: POWER OF APPOINTMENT
***In re* Edwards' Will Trusts; Dalgleish *v.* Leighton**

Lord Greene, M.R., Somervell and Cohen, L.JJ. 13th April, 1948

Appeal from a judgment of Jenkins, J.

E, who died on 6th February, 1944, executed a number of instruments disposing of his property, comprising (*a*) a settlement dated 16th October, 1936; (*b*) a will, of even date; (*c*) a memorandum dated 26th December, 1937, purporting to exercise a general power of appointment under the settlement, and (*d*) three codicils dated 15th and 22nd September, 1939, and 4th February, 1944. By cl. 2 of the settlement "the trust fund and the income thereof shall be held upon trust to pay the income and to transfer the capital . . . to such persons . . . as the settlor shall by any memorandum under his hand direct, and in default of such direction upon trust to pay or transfer the same . . . to such persons . . . as the managing trustee shall in his absolute and uncontrolled discretion think fit." Clause 3 gave certain benefits to the settlor's wife and children "subject to the provisions" of cl. 2. By cl. 2 of his will the testator gave "all my property to the trustees of . . . [the settlement in suit] . . . upon the trusts and subject to the powers and provisions therein declared and contained so far as such trusts [etc.] are subsisting and capable of taking effect." By the memorandum, which was signed but not witnessed, the settlor directed the trustees to raise and pay out of the trust funds certain sums to a trustee and to members of the testator's family. Jenkins, J., held that cl. 2 of the settlement purported to dispose of the property by reference to trusts to be created by some future document not in testamentary form, and was therefore ineffective, and that cl. 3 failed with it (91 SOL. J. 572). The beneficiaries appealed against the latter part of the decision.

LORD GREENE, M.R., said that the settlement was an identifiable document, and must be included in the will, which thus became a composite document. It was now conceded that cl. 2 of the settlement had failed. Clause 3 was expressed to take effect "subject to the provisions of" cl. 2; that meant, in so far as cl. 2 was ineffective, not only in fact, but also in law. In the court below it had been decided that the directions in the will for the incorporation in it of the settlement meant the whole settlement and nothing but the settlement, but he considered that the true effect was that so much of the settlement as could validly operate as part of a testamentary document should have effect according to its true construction. This view was confirmed by the words in cl. 2 of the will "so far as such trusts [etc.] are subsisting and capable of having effect." He would accordingly hold that the trusts of cl. 3 of the settlement took effect.

SOMERVELL, L.J., agreed in allowing the appeal.

COHEN, L.J., referred to *Webb* v. *Sadler* (1873), L.R. 8 Ch. 419 and agreed that the appeal should be allowed.

APPEARANCES: *M. J. Albery; Pascoe Hayward*, K.C., and *Wilfrid Hunt; Sir Andrew Clark*, K.C., and *Milner Holland*, K.C.; *E. I. Goulding* (*Mossop & Syms: Wordsworth & Co.; James Turner & Son*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

OPTION TO PURCHASE FREEHOLD: PERPETUITY
Hutton *v.* Watling

Lord Greene, M.R., Somervell and Cohen, L.JJ. 15th April, 1948

Appeal from a judgment of Jenkins, J.

The plaintiff, who had purchased the goodwill of the defendants' business in 1937, claimed specific performance of an agreement for the sale by the defendants to the plaintiff of the business premises, relying on a written document signed by the defendants, dated 6th September, 1937. By this, the defendants, *inter alia*, acknowledged receipt of the purchase price of the goodwill, agreed not to open or acquire a competing business, granted the plaintiff a weekly tenancy of the premises, and agreed that "in the event of purchaser wishing at any future date to purchase property in which business is situated, she has the option of purchase at a price not exceeding £450." There were further provisions applicable if the premises were sold to a third party, or if the plaintiff were to sell the business. The defendants contended (1) that the sale of the business had been effected by oral agreement and had been completed by transfer and payment before the execution of the option document, which was a mere recital of an executed contract with a number of additional promises made without consideration, and therefore unenforceable: alternatively (2) that as a matter of construction, the option provision was an independent stipulation for which there was no consideration; and (3) that the option provision was void as a perpetuity. They sought to adduce oral evidence in support of (1). Jenkins, J., did not admit the oral evidence, and gave judgment for the plaintiff on all the points raised (91 SOL. J. 613). The defendants appealed against the decision on the first two points.

LORD GREENE, M.R., said that the document, on the face of it, was intended to be the purchaser's document. Reading the document, the purchaser could only have understood that the vendors were recording the terms of an agreement into which they were about to enter or had entered. Once the document was construed, it was only capable of the interpretation that it was intended to be a true record of the contract; that being so, parol evidence to prove an antecedent oral agreement different in terms was not admissible. *Roe* v. *Naylor* (1918), 87 L.J.K.B. 958; 119 L.T. 359, was distinguishable. The appeal would be dismissed.

SOMERVELL and COHEN, L.JJ., agreed.

APPEARANCES: *J. F. Bowyer* (*Pritchard, Sons, Partington and Holland*, for *Alan G. Hawkins & Co.*, King's Lynn); *L. M. Jopling* (*Metcalfe, Copeman & Pettefar*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CHANCERY DIVISION

PRACTICE NOTE

COMPANY: REGISTRATION OF CHARGES

Vaisey, J. 28th April, 1948

VAISEY, J., said that when an application was made under the provisions of s. 85 of the Companies Act, 1929, to extend the time for registration of a charge, the affidavit filed in support should not state merely that the omission was due "to inadvertence" or restrict itself to the bare language of the statute. Such a course afforded no information to the court. In future, no such affidavit would be accepted, unless the nature of the inadvertence (etc.) was properly set out.

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

COAL: COMMITTEE AS "LICENSED MERCHANT"
Davey *v.* Shawcroft

Lord Goddard, C.J., Humphreys and Pritchard, JJ.

20th April 1948

Appeal from Parts of Lindsey justices.

A committee of employers and workmen of a steelworks were formed for the purpose of supplying the members of the committee with coal for domestic use. The secretary signed an application for registration of the committee as licensed coal merchants. The licence granted stated that the committee were registered as a licensed merchant and authorised to supply coal in the district. Coal having been supplied to certain premises in contravention of the Coal Distribution Order, 1943, the secretary was prosecuted. He contended that a committee could not be a licensed merchant, and, therefore, that he was not the servant or agent of such a merchant. The justices convicted him and he now appealed. By art. 78 of the order of 1943, "'licensed merchant' means any person carrying on an undertaking and whose name is entered in the licensed merchants' register as such and shall include the servant or agent . . . of any such person." By s. 2 of the Interpretation Act, 1889, in the construction of enactments relating to an offence the expression "person" is, unless the contrary intention appears, to include a body corporate. By s. 19 ". . . in every Act passed after the commencement of this Act, the expression 'person' shall, unless the contrary intention appears, include any body of persons corporate or unincorporate."

LORD GODDARD, C.J., said that, by virtue of s. 19 of the Interpretation Act, s. 2 of the Act notwithstanding, and as no contrary intention appeared in the Order of 1943, the committee could be registered as a licensed merchant. The secretary was therefore properly convicted as their servant or agent. Section 2, on which reliance had been placed, did not apply because it was not the committee who were being prosecuted.

HUMPHREYS, J., agreeing, said that the registration of the committee, as distinct from their named members, was irregular but not on that account invalid, for art. 20 of the order was directory only as to the particulars entered on the register, and the omission of some names would not invalidate a registration, particularly at the instance of a person such as the secretary of the committee, responsible for the form of the registration.

PRITCHARD, J., agreed.

APPEARANCES: *Swanwick* (*Sharpe, Pritchard & Co.*, for *W. Bains*, Scunthorpe); *H. L. Parker* (*The Solicitor, Ministry of Fuel and Power*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RATING: PLANT IN STEEL WORKS

Cardiff Rating Authority and Others *v.* Guest, Keen and Baldwin's Iron and Steel Co., Ltd.

Lord Goddard, C.J., Humphreys and Pritchard, JJ.
20th April, 1948

Case stated by the Recorder of Cardiff.

The iron and steel works of the respondent company contained, *inter alia*, (*a*) four blast furnaces, two fixed steel-melting furnaces and sixty-nine coke ovens; (*b*) five tilting furnaces; and (*c*) gas and hot and cold blast mains. Cardiff Rating Authority made a proposal, which Cardiff Assessment Committee confirmed, for an increase in the assessment to rates of the works to £80,327 net annual value and £20,082 rateable. The recorder, on the company's appeal, reduced the proposed rating assessment in respect of the plant in category (*a*) because it was short-lived, and, while valuing the works as a whole on the "contractor's basis," rejected that method of valuation in respect of that plant, to each item of which as a unit he assigned a separate net annual value. The tilting furnaces were elaborate appliances, 30 ft. long and 18 ft. wide, with an area of some 800 sq. ft., and weighing over 300 tons. Each one rested by its own weight on steel rollers resting on curved roller paths themselves supported on concrete piers. The furnaces could be lifted off the piers for the repair of the rollers and paths. The mains were overhead mains at a height of from 10 ft. to 35 ft. above the ground, made up of 20 ft. lengths bolted together, resting on, but not attached to, steel vertical supports. The external diameter varied from 20 in. to 96 in., and the hot blast mains were lined with brickwork. It was admitted that the supporting structures of the tilting furnaces and mains were rateable, but the recorder held that these furnaces and mains themselves were not rateable because they were movable. He reduced the figures to £58,000 and £14,000 net annual and rateable values. The committee and the authority appealed. (*Cur. adv. vult.*)

PRITCHARD, J., giving the judgment of the court, said that it would have been wrong in law, as established by *Consett Overseers* v. *Durham County Council* (1922), 20 L.G.R. 809, to treat the items of plant in category (*a*) as separate hereditaments. The Recorder could not, however, be taken as having so treated them. He had had in mind only one hereditament, namely the steelworks, although in arriving at the value of that hereditament he had preferred to consider those items of plant within it on a unit basis. The recorder was, moreover, not bound to assume that the rating authority's valuation of the hereditament had taken into account the obligation of the hypothetical tenant under s. 25 (1) (*b*) of the Rating and Valuation Act, 1925, to repair and maintain the hereditament, including short-lived plant. As for the tilting furnaces and mains in categories (*b*) and (*c*), they, having regard to their description, were rateable as being in the nature of buildings or structures within the meaning of class 4 of the Schedule to the Plant and Machinery (Valuation for Rating) Order, 1927. The recorder was wrong in construing class 4 of the Schedule as adopting the criterion of movability and in holding the plant in question non-rateable on that basis. Appeal allowed in part. Leave to both sides to appeal to the House of Lords.

APPEARANCES: *Craig Henderson*, K.C., and *H. H. Roskin* (*Theodore Goddard & Co.*, for *the Town Clerk*, Cardiff); *Sir Cyril Radcliffe*, K.C., and *R. Gwyn Rees* (*Simmonds, Church, Rackham and Co.*, for *Llewellyn & Hann*, Cardiff).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

VALUATION LIST: VALIDITY OF PROPOSAL TO AMEND

R. *v.* Surrey (Mid-Eastern Area) Assessment Committee, *ex parte* Merton and Morden Urban District Council and Others

Lord Goddard, C.J., Humphreys and Pritchard, JJ.
22nd April, 1948

Application for an order of mandamus.

The applicant rating authority made a proposal for amendment of the valuation list in respect of certain industrial premises. The notice of proposal stated that an increase of assessment was desired because the existing assessment was "insufficient, incorrect and unfair," and that the precise assessment required would be notified later. The rating authority had come to the conclusion that properties in the class of the hereditament in question in the district were assessed too low, there being a general rise in rental values and an increase in demand for premises of that character. The respondent assessment committee (the ratepayer not appearing) took the objections to the proposal (*a*) that it should have specified whether it was intended to keep the premises in the valuation list as wholly industrial or to increase the assessment by treating a part of them as non-industrial; and (*b*) that the rating authority's grounds for wishing to increase the assessment showed that they had not had regard to the particular hereditament in question, and, therefore, were not a "person aggrieved" entitled to make the proposal. This application was accordingly made.

LORD GODDARD, C.J.—HUMPHREYS and PRITCHARD, JJ., agreeing—said that the proposal was in compliance with s. 37 of the Rating and Valuation Act, 1925. It was unnecessary to make any reference to the assessment as non-industrial of a building appearing in the valuation list as wholly industrial. A proposal to treat part of such a hereditament as non-industrial in future was an entirely separate matter, and effect would not be given to it by an assessment committee unless it had been separately specified beforehand by notice. *R.* v. *Reading Assessment Committee, ex parte McCarthy E. Fitt, Ltd.* (1948), 92 SOL. J. 142; 64 T.L.R. 191, distinguished. As for the second objection, the expression "person aggrieved" must be construed as "person who considers himself aggrieved," because no one could say whether a person proposing a change in the valuation list was aggrieved until the assessment committee had determined whether he was aggrieved in fact. It was therefore sufficient to make the rating authority a person aggrieved that they were of opinion that hereditaments like that in question in the district were or might be undervalued, and they were accordingly entitled to make the proposal. Appeal allowed. Order for mandamus.

APPEARANCES: *Simes*, K.C., and *Scholefield* (*Wyatt & Co.*, for *Dudley Aukland*, Kingston-on-Thames); *Rowe*, K.C., and *Squibb* (*Gard, Lyell & Co.*, for *Theodore Bell, Cotton & Curtis*, Sutton).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

ADULTERATED MILK: SAMPLE TAKEN "IN TRANSIT"

Jones *v.* Edwards

Lord Goddard, C.J., Humphreys and Pritchard, JJ.
23rd April, 1948

Case stated by Merioneth justices.

An information was preferred against the appellant milk producers alleging that they had contravened s. 3 (1) of the Food and Drugs Act, 1938, in that milk produced by them was found to be adulterated. By their contract with the Milk Marketing Board the producers had to deposit their milk in churns at their farm collecting point, the churns being addressed to a dairy company specified in the contract. The board arranged for carriage of the milk from the farm collecting point to the premises of that company. Shortly after its collection from the farm collecting point, a sampling officer took a sample of a consignment of the producers' milk and found that it had been adulterated with water. On their prosecution the producers objected that the sample had not been taken while the milk was "in transit" in accordance with s. 68 (2) of the Food and Drugs Act, 1938.

LORD GODDARD, C.J., said that *Evans* v. *Rogers* [1946] K.B. 512, where the sample was taken while the milk was in transit, unknown to the producer, from the person to whom he was directed to deliver it, to a third person, was distinguishable. Here, the milk was in transit while on its way to the company to whom the producers had addressed it in accordance with contract. The sample, therefore, was properly taken. Appeal dismissed.

APPEARANCES: *Emrys Roberts* (*Rhys Roberts & Co.*, for *Guthrie Jones & Jones*, Bala); *J. Jones-Roberts* (*Jaques & Co.*, for *The Clerk of Merioneth County Council*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

HUSBAND AND WIFE: CONCURRENT SUMMONSES FOR MAINTENANCE AND CUSTODY

Heworth *v.* Heworth

Lord Merriman, P., and Willmer, J. 27th April, 1948

Appeal from Grimsby justices.

The respondent wife took out two summonses against the appellant, her husband, the one under the Summary Jurisdiction

(Married Women) Acts, complaining of desertion and wilful neglect to maintain, and the other claiming custody of and maintenance for the child of the marriage under the Guardianship of Infants Acts, 1886 and 1925. The justices awarded the wife 30s. a week on the first summons and 20s. a week for the child's maintenance on the other, and made an order for custody of the child on each summons. The husband appealed.

LORD MERRIMAN, P., said that, before considering the merits of the appeal, he wished to refer to the course followed by the justices of making an order as to custody on each summons. That course was to be deprecated if only because it would be extremely embarrassing that a husband who wished to challenge the justices' decision as to custody, as distinct from the amount of maintenance, should have to appeal to the Divorce Division against the order made under the Summary Jurisdiction (Married Women) Acts, and to the Chancery Division against that made under the Guardianship of Infants Acts. The proper course, where two summonses were taken out, each claiming custody of the child of the marriage, was for the justices to make an order of custody on only one of them. If they wished to obtain for the wife £1 a week maintenance under the Guardianship of Infants Acts as against the maximum of 10s. which they could order under the Summary Jurisdiction (Married Women) Acts, they should have made no reference to custody in their order on the summons taken out under the last-mentioned Acts, and have disposed of the question of custody only by their order under the Guardianship of Infants Acts. He (his lordship) trusted that that course would be adopted in all similar cases in future. The appeal was allowed on the merits.

WILLMER, J., agreed.

APPEARANCES: *Trapnell* (*Alan Edmunds & Co.*); *Edgelow* (*Boxall & Boxall*, for *Drury & Taylor*, Goole).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL

ACCESSORY'S PLEA OF GUILTY: ACQUITTAL OF PRINCIPALS

R. *v.* Rowley

Lord Goddard, C.J., Humphreys and Singleton, JJ.
8th March, 1948

Appeal from conviction.

The appellant and two others were charged at Birmingham Quarter Sessions on the first count of an indictment with breaking and entering a warehouse and stealing specified property, and on the second count with receiving that property knowing it to have been stolen. They all pleaded Not Guilty on both counts. The fourth count charged the appellant that, knowing that the other two men had received the property knowing it to have been stolen, he did afterwards "receive, comfort, harbour, assist and maintain" them. To that charge he pleaded Guilty, and was thereupon sentenced by the assistant recorder to nine months' imprisonment. The trial of the other two men then proceeded, and they were acquitted on all charges.

HUMPHREYS, J., giving the judgment of the court, said that the result of what had happened was that there was error on the record which could not be cured by amendment. The court had, however, the power which the Court of King's Bench used to have with regard to error on the record: there being no means of amending the record to make it consonant with the proved facts, and it being inconsistent with itself, the only course open to the court was to quash the conviction. Two mistakes had been made at the trial: (1) as it had to be decided by a jury whether the other two men had committed a felony charged, it was wrong to admit a plea of guilty to comforting them well knowing that they had committed a felony, for, if the appellant had pleaded not guilty, and the other two men had then been acquitted, the prosecution would have been bound to offer no evidence against the appellant on the charge of comforting; (2) the assistant recorder should not have passed sentence on the appellant without waiting to try the two principals. Thus to sentence him was to deprive him of his opportunity of changing his plea to one of not guilty, when the prosecution would have been bound to offer no evidence against him. He could not do that because he had been sentenced. Conviction quashed.

APPEARANCES: *Hillard* (*Philip Baker & Co.*, Birmingham); *R. H. Blundell* (*Director of Public Prosecutions*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

MR. H. STROUD

Mr. Herbert Stroud, solicitor, of Rugby, died on 11th May, aged seventy-six. He was admitted in 1896.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

"Solicitors and the Stock Exchange"

Sir,—The promotion of a Law Society Stock Exchange is very desirable.

I suppose my firm has an annual turnover of something approaching £1/5m.—the amount, of course, depends upon death duties and redemptions and a growing inability to get money out on mortgage.

One need not be a financier to know what to advise a client what to sell and what to buy, even when uncontrolled by the Trustee Act, and in the majority of cases we instruct brokers without asking their views, which are generally very hesitant nowadays.

The share of brokerage allowed just covers this advice—one simply cannot charge a client something on top of the full brokerage.

If the Stock Exchange persist in their attitude it will be simpler and save trouble to get the banks to do the job.

I believe that facilities to buy and sell stocks and shares through The Law Society would in the circumstances be generally welcomed.

AN EAST ANGLIAN SOLICITOR.

RECENT LEGISLATION

STATUTORY INSTRUMENTS 1948

No. 1005. **Agriculture Act, 1947** (Commencement) (No. 3) Order, 1948. May 12.

No. 1015. **Aliens** (Restriction) (Palestinian Citizens) Direction, 1948. May 12.

No. 1002. **Defence Regulations** (No. 4) Order, 1948. May 12.

No. 1000. **Mental Deficiency** Regulations, 1948. May 10.

No. 1020. **Motor Spirit** (Regulation) Order, 1948. May 13.

No. 1006. **Patents, etc.** (Spanish Colonies) (Convention) Order, 1948. May 12.

No. 966. **Town and Country Planning** (Use Classes) (Scotland) Order, 1948. Corrigenda slip.

No. 965. Town and Country Planning (Use Classes for Sched. III Purposes) (Scotland) Order, 1948. Corrigenda slip.

MINISTRY OF HEALTH

Local Land Charges Form L.L.C. 1 (E) Agriculture Act, 1947. Part IX of Local Land Charges Register relating to Supervision Orders made by the Minister of Agriculture and Fisheries as defined by the Agriculture Act, 1947 (Registration of Supervision Orders) Rules, 1948. Schedule to Official Certificate of Search.

MINISTRY OF TOWN AND COUNTRY PLANNING

Circular No. 44. Town and Country Planning (General Development) Order, 1948. May 12.

[**Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.**]

NOTES AND NEWS

Honours and Appointments

The King has approved a recommendation of the Home Secretary that Mr. HAROLD RICHARD BOWMAN SHEPHERD be appointed Recorder of Pontefract.

Mr. D. F. BANWELL has been appointed Assistant Solicitor to Rochdale Corporation.

Mr. L. E. HUGHES, LL.B., Assistant Solicitor to the County Borough of West Ham, has been appointed first Assistant Solicitor to Preston County Borough. (This notice is in substitution for the notice in regard to Mr. Hughes that appeared in our issue of 8th May.)

Mr. J. W. LEA, Assistant Solicitor to the County Borough of West Ham, has been appointed Assistant Solicitor to the City of Birmingham. He was admitted in 1941.

Mr. J. D. SCOTT has been appointed Deputy Clerk of the Peace for Kent. He was admitted in 1938.

Mr. J. H. FISHER, Assistant Solicitor to St. Marylebone Borough Council, has been appointed Head of the Legal Department, South Wales Electricity Board. He was admitted in 1934.

Notes

SUPREME COURT

KING'S BIRTHDAY, 1948

The courts will sit, and the offices of the Supreme Court will remain open, on the King's Birthday, 1948, Thursday, 10th June.

CHAMBERS BUSINESS

KING'S BENCH DIVISION

It is announced in the Daily Cause List that for the remainder of the Trinity Sittings the judge will sit in Chambers on Monday in each week instead of on Tuesday.

AGRICULTURE ACT, 1947 (COMMENCEMENT)

Sections 98 to 100 of the Agriculture Act, 1947, which deal with pest and weed control, and s. 110 of that Act so far as it repeals the Destructive Imported Animals Act, 1932, s. 4, and the Prevention of Damage by Rabbits Act, 1939, Pt. I, are brought into operation on 1st June, 1948, by the Agriculture Act, 1947 (Commencement) (No. 3) Order, 1948 (S.I. 1948 No. 1005), made on 12th May under the Agriculture Act, 1947, s. 111 (2).

Sections 98 to 100 supersede, in England and Wales, reg. 63 of the Defence (General) Regulations, 1939, and accordingly that regulation has been revoked as from 1st June, 1948, in its application to England and Wales, and adapted for continued application to Scotland and Northern Ireland, by the Defence Regulations (No. 4) Order, 1948 (S.I. 1948 No. 1002), made on 12th May.

THE WORSHIPFUL COMPANY OF SOLICITORS

The company held its Annual Guild Service at St. Edmund the King, Lombard Street, on 19th May (St. Yves Day), the preacher being the Rev. R. M. La Porte Payne, Rector of St. Mary Abchurch and Honorary Chaplain to the Guild. This was followed by a Court luncheon at Grocers' Hall, when a Past Master's Badge was presented by his colleagues to Mr. A. P. Whatley, the outgoing Master. At the Court which followed the luncheon, Mr. H. N. Smart, C.M.G., O.B.E., J.P., was elected Master for 1948–49, Mr. R. T. Outen, Senior Warden, and Mr. P. R. Johnston, Junior Warden. The company is holding a Ladies' Dinner at the Mansion House on 16th June to meet the Lord Mayor and Sheriffs and their ladies.

THE SOLICITORS' MANAGING CLERKS' ASSOCIATION

The annual general meeting of The Solicitors' Managing Clerks' Association took place on 13th May at The Law Society's Court Room, Carey Street, W.C.2. The retiring President, Mr. John W. Murray, said, in his presidential address, that considerable progress had been made with the scheme for certificating managing clerks, and a joint committee of The Law Society and the Association was being set up to work out details of the scheme, and it was hoped to make a joint announcement later in the year. There had been a considerable increase in membership. Lectures to junior clerks had been given by a number of members of the Council of the Association, and a series of lectures had been given to members by Mr. D. P. Kerrigan, Barrister-at-Law, upon the Town and Country Planning Act, 1947, and by Mr. J. B. Lindon, K.C., on the Companies Act, 1947. Other lectures by prominent members of the Bar had also been given. Members' meetings were held regularly and all other activities of the Association had been resumed.

Mr. E. B. Haseldine, of Messrs. Lewis & Lewis & Gisborne and Co., was elected President for 1948. Mr. John W. Murray and Mr. D. T. Lark were elected Vice-Presidents.

Messrs. Peat, Marwick, Mitchell & Co. were re-elected honorary auditors.

BAR COUNCIL ELECTIONS

The following twenty-four candidates have been duly elected to fill the twenty-four vacancies upon the council:—

KING'S COUNSEL.—Mr. C. Paley Scott, Mr. Tristram de la Poer Beresford, Mr. J. N. Gray, Mr. Eric Sachs, Mr. G. J. Paull, Mr. E. E. S. Montagu, Mr. Basil Nield, M.P., Mr. A. L. Ungoed-Thomas, M.P., Mr. C. R. Russell.

OUTER BAR.—Mr. R. E. Gething, Mr. Elliot Gorst, Mr. H. O. Danckwerts, Mr. W. Latey, Mr. E. A. Hawke, Mr. M. L. Gedge, Mr. B. A. Harwood, Mr. J. F. Bowyer, Mr. E. Garth Moore, Mr. G. N. Black, Mr. G. R. Swanwick.

UNDER TEN YEARS' STANDING AT THE BAR.—Mr. W. P. Grieve, Mr. G. V. Rogers, Mr. R. E. Megarry, Mr. D. C. Bain.

Wills and Bequests

Mr. J. E. T. Tucker, solicitor, of Derby, left £78,468.

Mr. J. T. Timmins, solicitor, of Bath, left £25,173, with net personalty £24,606.

Mr. E. W. Norris, of Halifax, solicitor, coroner for Halifax, Huddersfield, the Honour of Pontefract, and the West Morley division of the West Riding, left £24,730, with net personalty £24,577.

His bequests included half a year's salary to each member of his office clerical staff.

COURT PAPERS

SUPREME COURT OF JUDICATURE

TRINITY SITTINGS, 1948

HIGH COURT OF JUSTICE—CHANCERY DIVISION

GROUP A.—Mr. Justice VAISEY

Mr. Justice VAISEY will sit for the disposal of the Witness List.

Mr. Justice ROXBURGH

Mondays—Chambers Summonses (Group A).
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.

Mr. Justice WYNN PARRY

Mondays—Companies Business.
Such business as may from time to time be notified.

GROUP B.—Mr. Justice ROMER

Mondays—Bankruptcy Business.
Bankruptcy Motions and Bankruptcy Judgment Summonses will be heard on Mondays, 31st May, 14th and 28th June and 12th July.
A Divisional Court in Bankruptcy will sit on Mondays, 7th and 21st June, and 5th and 19th July.
Such business as may from time to time be notified.

Mr. Justice JENKINS

Mr. Justice JENKINS will sit for the disposal of the Witness List.

Mr. Justice HARMAN

Mondays—Chambers Summonses (Group B).
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.
Lancashire Business will be taken on Thursdays, 10th and 24th June and 8th and 22nd July.

TRINITY SITTINGS, 1948

COURT OF APPEAL AND HIGH COURT OF JUSTICE

CHANCERY DIVISION

	ROTA OF REGISTRARS IN ATTENDANCE ON GROUP A			
	EMERGENCY ROTA	APPEAL COURT I	Mr. Justice VAISEY	Mr. Justice ROXBURGH
Date			*Witness*	*Non-Witness*
Mon., May 31	Mr. Andrews	Mr. Farr	Mr. Farr	Mr. Hay
Tues., June 1	Jones	Blaker	Blaker	Farr
Wed., ,, 2	Reader	Andrews	Andrews	Blaker
Thurs., ,, 3	Hay	Jones	Jones	Andrews
Fri., ,, 4	Farr	Reader	Reader	Jones
Sat., ,, 5	Blaker	Hay	Hay	Reader

	GROUP A		GROUP B	
	Mr. Justice WYNN PARRY	Mr. Justice ROMER	Mr. Justice JENKINS	Mr. Justice HARMAN
	Business as listed	*Business as listed*	*Witness*	*Non-Witness*
Date				
Mon., May 31	Mr. Blaker	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., June 1	Andrews	Hay	Jones	Reader
Wed., ,, 2	Jones	Farr	Reader	Hay
Thurs., ,, 3	Reader	Blaker	Hay	Farr
Fri., ,, 4	Hay	Andrews	Farr	Blaker
Sat., ,, 5	Farr	Jones	Blaker	Andrews

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